

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CHARLES L. CRISWELL)

Appearances;

For Appellant: Charles L. Criswell,
in pro. per.

For Respondent: Bruce R. Langston
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Charles L. Criswell against a proposed assessment of personal income tax and penalties in the total amount of \$1,503 for the year 1979.

Appeal of Charles L. Criswell

The issue for determination is whether appellant has established any error in respondent's proposed assessment of personal income tax and penalties for 1979.

Appellant did not file a California personal income tax return for the appeal year although required to do so. When respondent demanded that a return be filed, appellant failed to comply. Thereafter, respondent issued the notice of proposed assessment in issue. The assessment was based upon information obtained from the California Employment Development Department. The proposed assessment included penalties for failure to file a return and for failure to file a return upon notice and demand.' (Rev. & Tax. Code, §§ 18681 & 18683.) Appellant protested, but refused to file a return. In **due** course the proposed assessment was affirmed, and this appeal followed.

During the course of these proceedings, appellant filed a Form 540X which showed no income, deductions or credits. The form, however, did indicate that \$499.87 had been withheld from appellant's wages for state income tax. Therefore, respondent has agreed to reduce the proposed assessment by that amount, and to make a corresponding adjustment, to the penalties.

It is well settled that respondent's determinations of additional tax, and the penalties involved in this appeal, are presumptively correct, and the burden is upon the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Arthur J. Porth, Cal. St. Bd. of Equal., Jan. 9, 1979.) In support of his position, appellant advances the same arguments which were rejected in the Appeals of Fred R. Dauberger, et al., decided March 31, 1982. We see no reason to deviate from that determination in this appeal. Accordingly, respondent's action in this matter will be sustained.

Appeal of Charles L. Criswell

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, ~~that~~the action of the Franchise Tax Board on the protest of Charles L. Criswell against a proposed assessment of personal income tax and penalties in the total amount of \$1,503 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of August , 1983, by the State Board of Equalization, **with** Board Members Mr. Bennett, Mr. Collis, Mr. **Dronenburg**, Mr. **Nevins** and Mr. Harvey present.

William M. Bennett , Chairman
Conway H. Collis - - - , Member
Ernest J. Dronenburg, Jr. - - , Member
Richard Nevins , Member
Walter Harvey * - - ^ , Member

*For Kenneth Cory, per Government Code section 7.9